

**Deposition Designations for:  
ELIHU INSELBUCH  
June 12, 2009**

**Deposition Designation Key**

**Arrowood = Arrowood Indem. Co.  
f/k/a Royal Indem. Co. (Light Green)**

**BNSF = BNSF Railway Co. (Pink)**

**Certain Plan Objectors "CPO" = Government Employees Insurance Co.; Republic Insurance Co. n/k/a Starr Indemnity and Liability Co.; OneBeacon America Insurance Co.; Seaton Insurance Co.; Fireman's Fund Insurance Co.; Allianz S.p.A. f/k/a Riunione Adriatica Di Sicurtà; and Allianz SE f/k/a Allianz Aktiengesellschaft; Maryland Casualty Co.; Zurich Insurance Co.; and Zurich International (Bermuda) Ltd.; Continental Casualty Co. and Continental Insurance Co. and related subsidiaries and affiliates; Federal Insurance Co.; and AXA Belgium as successor to Royal Belge SA (Orange)**

**CNA = Continental Cas. Co & Continental Ins. Co. (Red)**

**FFIC = Fireman Funds Ins. Co. (Green)  
FFIC SC = Fireman Funds Ins. Co. "Surety Claims" (Green)**

**GR = Government Employees Ins. Co.; Republic Ins. Co. n/k/a Starr Indemnity and Liability Co.**

**Libby = Libby Claimants (Black)**

**OBS = OneBeacon America Ins. Co. and Seaton Ins. Co. (Brown)**

**PP = Plan Proponents (Blue)**

**Montana = State of Montana (Magenta)**

**Travelers = Travelers Cas. and Surety Cos. (Purple)**

**UCC & BLG = Unsecured Creditors' Committee & Bank Lenders Group (Lavender)**

**AFNE = Assume Fact Not in  
Evidence  
AO = Attorney Objection  
BE = Best Evidence  
Cum. = Cumulative  
Ctr = Counter Designation  
Ctr-Ctr = Counter-Counter  
ET = Expert Testimony  
F = Foundation  
408 = Violation of FRE 408  
H = Hearsay  
IH - Incomplete Hypothetical**

**L = Leading  
LA = Legal Argument  
LC = Legal Conclusion  
LPK - Lacks Personal Knowledge  
LO = Seeking Legal Opinion  
NT = Not Testimony  
Obj: = Objection  
R = Relevance  
S = Speculative  
UP = Unfairly Prejudicial under Rule 403  
V = Vague**

In Re: \_\_\_\_\_ X Chapter 11  
Case No.

W.R. Grace & Co., et al.,

June 12, 2009

DEPOSITION of ELIHU INSELBUCH,  
held at the offices of Caplin &  
Drysedale, Chartered, 375 Park Avenue,  
New York, New York, commencing at  
approximately 9:37 A.M., on the above  
date, before Lisa Lynch, a Registered  
Merit Reporter, New Jersey Certified  
Court Reporter, License No. XI00825,  
and Certified Realtime Reporter

MAGNA LEGAL SERVICES, LLP

7 Penn Center, 8th Floor  
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<p>1 DEPOSITION SUPPORT INDEX</p> <p>2</p> <p>3 Direction to Witness Not To Answer</p> <p>4 Page Line Page Line</p> <p>5 (None)</p> <p>6 Request For Production of Documents</p> <p>7 Page Line Page Line</p> <p>8 (None)</p> <p>9 Stipulations</p> <p>10 Page Line Page Line</p> <p>11 (None)</p> <p>12 Questions Marked</p> <p>13 Page Line Page Line</p> <p>14 (None)</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>1 A. Not really.</p> <p>2 <b>Q. Are you able to describe</b></p> <p>3 <b>it for me?</b></p> <p>4 A. It appears to be a</p> <p>5 notice of my deposition.</p> <p>6 <b>Q. All right. And do you</b></p> <p>7 <b>understand that you are here today</b></p> <p>8 <b>pursuant to this Notice of</b></p> <p>9 <b>Deposition?</b></p> <p>10 A. Yes.</p> <p>11 <b>Q. And that that's in</b></p> <p>12 <b>connection with the contested matter</b></p> <p>13 <b>that is at issue by the proposed</b></p> <p>14 <b>confirmation of the Chapter 11 plan</b></p> <p>15 <b>in the Grace case?</b></p> <p>16 A. If you say so.</p> <p>17 <b>Q. Thank you. This</b></p> <p>18 <b>deposition will go very quickly if</b></p> <p>19 <b>you take that position to all of my</b></p> <p>20 <b>questions.</b></p> <p>21 <b>Now, today I am going to be</b></p> <p>22 <b>referring to the Libby claimants. Do</b></p> <p>23 <b>you understand that those are people</b></p> <p>24 <b>who are clients of the firms of</b></p>
Page 11	Page 13
<p>1 ELIHU INSELBUCH,</p> <p>2 having been sworn by the Notary</p> <p>3 Public of the States of New</p> <p>4 York and New Jersey, was</p> <p>5 examined and testified as</p> <p>6 follows:</p> <p>7</p> <p>8 MR. COHN: All right.</p> <p>9 Let's start off marking this as</p> <p>10 Exhibit 1.</p> <p>11 (Notice of Deposition</p> <p>12 marked for identification as</p> <p>13 Inselbuch Exhibit 1.)</p> <p>14</p> <p>15 EXAMINATION BY</p> <p>16 MR. COHN:</p> <p>17 <b>Q. Good morning.</b></p> <p>18 A. Good morning.</p> <p>19 <b>Q. As you know, I'm Dan</b></p> <p>20 <b>Cohn, counsel for the Libby</b></p> <p>21 <b>claimants.</b></p> <p>22 <b>I've placed in front of you a</b></p> <p>23 <b>document marked Exhibit 1. Do you</b></p> <p>24 <b>recognize it?</b></p>	<p>1 <b>McGarvey Heberling or Lewis Slovack</b></p> <p>2 <b>in Montana?</b></p> <p>3 A. I understand that some</p> <p>4 of them may be clients of those</p> <p>5 firms.</p> <p>6 <b>Q. Well, you understand the</b></p> <p>7 <b>ones that are being represented here</b></p> <p>8 <b>today at the deposition?</b></p> <p>9 MR. FINCH: Objection.</p> <p>10 You can answer.</p> <p>11 <b>Q. And you understand these</b></p> <p>12 <b>are people who are represented in the</b></p> <p>13 <b>bankruptcy case also by my firm, Cohn</b></p> <p>14 <b>Whitesell &amp; Goldberg?</b></p> <p>15 A. I understand that you</p> <p>16 represent some people and that the</p> <p>17 other two firms represent some</p> <p>18 people. My understanding of the</p> <p>19 concept of the Libby claimants are</p> <p>20 claimants that may have claims now or</p> <p>21 may in the future have claims against</p> <p>22 Grace who reside in the Libby area.</p> <p>23 <b>Q. And who claim to have</b></p> <p>24 <b>been exposed -- excuse me -- to have</b></p>

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MR. FINCH: Object to form.

A. I don't know what you mean. I have served as, and do serve as, counsel to some of the trust advisory committees.

**Q. And would you explain for the record what a trust advisory committee is?**

MR. FINCH: Object to form.

A. Under the terms of these plans and under the terms of the TDPs that are part of the plan documents, an entity is created called a trust advisory committee which consists of one or more attorneys who have responsibilities that are defined within the TDP documents and within the trust agreement documents.

MR. J. COHN: Dan, let's just note the arrival of two more counsel. Would you identify yourselves?

A. That's enough.

**Q. And in that capacity, have you been actually called upon to render advice to those trust advisory committees?**

A. From time to time.

**Q. Now, what is your role in the W.R. Grace Chapter 11 case?**

A. My firm is counsel to the asbestos creditors committee.

**Q. And what is your personal role in connection with that representation?**

A. I suspect that I am the lead counsel.

**Q. You suspect or is that what you are?**

A. What I am is in the eye of the beholder.

**Q. Did you participate in negotiations concerning the plan -- strike that.**

**Did you participate in negotiations that led to the filing**

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Page 21

MR. MUELLER: Alex Mueller from Mendes & Mount for certain London market insurance companies.

MS. DeCHRISTOFARO: Elizabeth DeChristofaro from Ford Marrin for Continental Casualty Company and Continental Insurance Company.

THE WITNESS: Those appearances are not part of the roles of the TACs, and I don't remember where I was in the middle of my answer.

MR. COHN: Well, let's help you by reading back as far as you got in this answer.

(Off the record.)

(The Reporter reads the last answer.)

BY MR. COHN:

**Q. Do you have anything to add?**

**of the Chapter 11 plan that is now coming before the Bankruptcy Court?**

A. I did.

**Q. Would you describe your role in those negotiations?**

A. I was counsel to the asbestos creditors committee.

**Q. Would it be fair to say that you were the lead negotiator for the asbestos creditors committee?**

MR. FINCH: Object to form.

A. I wouldn't say so.

**Q. Who else participated in the negotiations on behalf of the ACC?**

A. Well, if we're talking about the part of the negotiations that involve the crafting and agreement to the term sheet or the economic arrangements with the debtor, the committee -- when I say "the committee", I mean the asbestos creditors committee -- the committee

PP  
CrrPP  
Obj:  
R;  
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1 appointed a negotiating subcommittee  
2 that attended those negotiations and  
3 I attended with them.

4 That negotiating subcommittee,  
5 as I remember, consisted of Mr. Rice;  
6 Mr. Weitz, W-e-i-t-z; Mr. Cooney, and  
7 one or both of Mr. Budd and/or Mr.  
8 Baron.

9 If we're talking about the  
10 negotiations thereafter that involved  
11 work with the futures rep and other  
12 plan proponent constituencies in  
13 developing what became the documents  
14 that reflect the plan, I played a  
15 minor role in that other than --  
16 well, I should say I played a minor  
17 role in that other than in connection  
18 with the development of the trust  
19 agreement and the TDP.

20 The other documents and the  
21 negotiation of those documents were  
22 assigned by the committee to my  
23 partner, Mr. Lockwood, and others who  
24 worked under his leadership.

1 could compare it with my copy of the  
2 term sheet that I signed and figure  
3 out whether it's the same document,  
4 but I have no way of knowing. If you  
5 represent to me that it is, I'll  
6 accept your representation.

7 **Q. Well, yes, let me**  
8 **represent to you that's the same**  
9 **document that I have always seen and**  
10 **has always been represented to me to**  
11 **be the correct term sheet.**

12 A. Well, I have a book in  
13 front of me with three documents that  
14 I've been working with. One is the  
15 TDP as it exists in the plan, one is  
16 the trust agreement as it exists in  
17 the plan and the other is the term  
18 sheet that I signed.

19 MR. COHN: Let's go off  
20 the record.

21 (Off the record.)

22 (Term sheet, seven  
23 pages, marked for  
24 identification as Inselbuch

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1 **Q. So is it fair to say on**  
2 **behalf of the ACC you were the person**  
3 **primarily responsible for the trust**  
4 **agreement and the TDP?**

5 A. I was the counsel  
6 primarily involved in that work.

7 MR. COHN: Let's mark  
8 this as Exhibit 2, please.

9 (Term sheet, 11 pages,  
10 marked for identification as  
11 Inselbuch Exhibit 2.)

12 BY MR. COHN:

13 **Q. Do you have Exhibit 2 in**  
14 **front of you?**

15 A. I do.

16 **Q. Do you recognize it?**

17 A. No.

18 **Q. If you would turn to the**  
19 **last four pages of that document, let**  
20 **me ask you whether you recognize**  
21 **those four pages.**

22 A. I do not. It purports  
23 to be the term sheet. I've never  
24 seen it in this form so I guess I

1 Exhibit 2A.)

2 (Preliminary Expert  
3 Report on W.R. Grace Trust by  
4 Mark Peterson dated March  
5 2009 marked for identification  
6 as Inselbuch Exhibit 3.)

7 (Exhibit 4 to Exhibit  
8 Book, Trust Distribution  
9 Procedures, marked for  
10 identification as Inselbuch  
11 Exhibit 4.)

12 MR. COHN: All right,  
13 back on the record.

14 **Q. Do you now have in front**  
15 **of you a document that has been**  
16 **marked as Exhibit 2A?**

17 A. Yes, sir.

18 **Q. Do you recognize that**  
19 **one?**

20 A. I do.

21 **Q. Tell us what it is.**

22 A. It's the term sheet that  
23 was signed among the debtor, the  
24 futures rep, the committee and I

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1 believe the equity. Yes, the equity  
2 committee I guess they're called.

3 **Q. Okay. And when you said**  
4 **"the committee" in your answer, you**  
5 **meant the Asbestos Claimants**  
6 **Committee?**

7 A. Yes. I will mean that  
8 always.

9 **Q. Terrific. And that's**  
10 **also what we mean when we say ACC?**

11 A. Yes.

12 **Q. Now, does this document,**  
13 **Exhibit 2A, reflect the entire deal**  
14 **amongst those parties concerning the**  
15 **subject matter thereafter at the time**  
16 **that it was entered into?**

17 MR. FINCH: Object to  
18 form.

19 A. Like all term sheets, it  
20 reflects all the points that the  
21 people who signed it thought needed  
22 to be put on paper at the time.

23 **Q. And what points were**  
24 **agreed to but not put on paper?**

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1 A. None that I recall. But  
2 for sure when you -- when you  
3 negotiate a term sheet, you  
4 understand that what will evolve in  
5 what are much more complicated  
6 documents are issues subsidiary to  
7 the issues that are agreed in the  
8 term sheet that will need to be  
9 resolved over time within the context  
10 of the term sheet agreement.

11 **Q. Were there any**  
12 **understandings reached in connection**  
13 **with this term sheet that would not**  
14 **rise to the level of an agreement?**

15 A. Not --

16 MR. FINCH: Object to  
17 form.

18 A. -- that I recall.

19 **Q. And specifically**  
20 **concerning treatment of Libby claims,**  
21 **were there any agreements or**  
22 **understandings?**

23 A. Not that I recall, other  
24 than what's provided in the

1 document.

2 **Q. Have you reviewed a**  
3 **transcript of the recent deposition**  
4 **of Peter Lockwood?**

5 A. I read it briefly,  
6 quickly.

7 **Q. In that brief reading,**  
8 **did you come across any statements**  
9 **made by Mr. Lockwood with which you**  
10 **disagreed?**

11 MR. FINCH: Object to  
12 form, vague, overbroad.

13 A. Yeah, there was one  
14 place where he was talking about or  
15 answering questions that had to do  
16 with a provision in the term sheet --  
17 in the TDP -- let's see -- in the  
18 extraordinary claims section as to  
19 whether or not that portion of the  
20 extraordinary claims criteria which  
21 requires that there not be the  
22 potential for substantial recovery  
23 elsewhere would apply to the  
24 extraordinary claim that would

1 satisfy the criteria otherwise for an  
2 eight times treatment. He was  
3 unclear about that, at best, and  
4 perhaps wrong. My understanding of  
5 that provision is that that  
6 requirement is included in either  
7 category of the extraordinary claims  
8 treatment.

9 **Q. All right. To qualify**  
10 **for the eight times multiplier under**  
11 **extraordinary claims treatment, you**  
12 **must, in addition to meeting the**  
13 **exposure criteria set forth in the**  
14 **TDP, also show little likelihood of**  
15 **substantial recovery elsewhere?**

16 A. Whatever that language  
17 is, yes, for sure.

18 **Q. Any other statements**  
19 **come to mind that you saw with which**  
20 **you did not agree?**

21 MR. FINCH: Object to  
22 form.

23 A. Not that I recall off  
24 the top of my head.



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**Q. Have you reviewed a transcript of the recent deposition of Mark Peterson?**

A. No.

**Q. All right. Let me now hand you a document that has been marked as Exhibit 3. This is Dr. Peterson's report.**

MR. COHN: What I'm handing around the room are just the pages on which I intend to ask questions because otherwise the copying would have been voluminous.

**Q. I'm sorry. Did I --**

A. You didn't ask me anything.

**Q. Thank you. Do you recognize the document that has been marked Exhibit 3?**

A. I recognize it says what it says it is.

**Q. Which is what?**

A. It says it's the

**Q. Do you recognize Exhibit 4, Mr. Insellbuch?**

A. I accept your representation that it is what it says it is.

**Q. Okay, thank you.**

Now, let me ask you to look at Exhibit 3, which is Dr. Peterson's report, and take a look at page five.

A. I'm at page five.

**Q. All right.**

A. I should warn you I'm reading this for the first time.

**Q. Okay. Let me point you then to exactly the statement I want you to read. Would you read the first sentence of the second paragraph on page five?**

A. Yes.

**Q. Would you like to read it out loud, please, for the record?**

A. "The trust's TDP follows the standard form used for almost

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Preliminary Expert Report on W.R. Grace Trust by Mark Peterson of Legal Analysis Systems dated March 2009.

**Q. And do you know Dr. Peterson?**

A. I do.

**Q. What is his capacity in this case?**

A. He is engaged as an expert to assist the asbestos -- to assist the committee.

**Q. Thank you.**

Let me now hand you a document that's been marked as Exhibit 4. I will represent to everyone concerned this is a copy of the trust distribution procedures, or TDP, that has been attached to the plan.

MR. COHN: In accordance with our custom at these depositions, the parties will use their own copies to refer to but we understand it is the same document.

every asbestos trust created since 2002."

**Q. Do you agree with that statement?**

A. Yes.

**Q. So when I talk about the standard form or a term such as that, you'll understand that I'm referring to what Dr. Peterson is referring to here, which is the standard form of TDP that has been used for almost every asbestos trust created since 2002?**

MR. FINCH: Object to form.

A. Is that a question?

**Q. Will you understand that that's what I mean by that term?**

A. Okay.

**Q. Now, in this case there were some departures from the standard form; is that correct?**

A. In each case there is some departures from the standard

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form and there were some here too.

**Q. Who drafted the TDP in this case?**

A. The TDP that evolved into the one in this case?

**Q. Yes.**

A. That's now on file?

**Q. Exhibit 4.**

A. The first draft, my office, probably Anne McMillan.

**Q. And how did the document evolve from that first draft into Exhibit 4?**

A. Okay. You will recall that at some point the Court relieved the debtor's exclusivity. At that point the committee and the futures rep determined to file their own plan, proposed plan of reorganization.

In that connection, it was understood that there would be the need for a trust agreement and a TDP and it was at that point, which I

the committee and the futures rep on the terms of the TDP.

Events then overtook that plan.

In fact, the events that you make reference to with this term sheet which was signed -- I'm referring to Exhibit 2A -- in early April of 2008 and now there was a TDP that needed to be considered by the other plan proponents because it would now not be associated with a separate plan that had been filed by the committee and the futures rep but, rather, would evolve into a plan that would be filed by the plan proponents as part of that plan.

In the spring of 2008 the committee and the futures rep were already aware of criticisms that counsel for some of the Libby claimants had with the terms of the TDP and we entered into a dialogue at the instructions of the committee with you and with Mr. Heberling to

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believe was somewhere in the fall of 2007, that we began the preparation of the TDP.

A draft was crafted by our office for consideration by the committee. After the committee considered the draft and considered input from Dr. Peterson, the draft was put in a form that was then submitted to the futures rep's counsel for their consideration. And after we received their comments and suggestions, the draft was further edited and reconsidered by the committee and sometime by the beginning/early part of 2008 there was a TDP that was agreeable to the committee and to the futures rep.

Prior to that time we had actually filed a plan, I believe, that was proposed by the committee and the futures rep but I believe -- my best memory is that plan was filed before there was agreement between

see whether points that you were making were of sufficient validity to cause us to consider changes in the TDP. Some of those points were so considered and resulted in changes in the TDP that evolved in the spring and summer of 2008 and are reflected in the plan as filed.

There were also comments to the TDP that were received from other parties who had an interest and a right to consider the documents. I'm mindful of the representatives that counsel for Sealed Air participated in some parts of the TDP and trust agreement and there may have been comments as well from the debtor. I'm not -- I don't recall. But the effect of all of that was it was -- the result of all of that was the TDP that is now your Exhibit 4. That's the general history of its evolution.

**Q. Let's turn to Section 5.3(b)(3) of the TDP at pages 31 and**

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1 into two parts. The first part is  
2 the greater of the trust's last offer  
3 to the claimant or the award that the  
4 claimant declined in non-binding  
5 arbitration. That's what it says the  
6 first part is. However, that amount  
7 should not exceed the amount that the  
8 jury decides.

9 Now, the balance, it says, gets  
10 divided into five equal installments  
11 in years 6 through 10 following the  
12 year of the initial payment, all of  
13 that again subject to the applicable  
14 payment percentage, the maximum  
15 available payment and the claims  
16 payment ratio provisions. So that's  
17 how it gets paid out. And it doesn't  
18 get any sequencing adjustments.

19 **Q. And is it subject to**  
20 **maximum value or is it --**

21 A. Yes, and it's subject to  
22 the maximum values.

23 **Q. So that the amount of**  
24 **the trust's last offer or the**

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1 pending question.)

2 MR. FINCH: Object to  
3 form.

4 A. No. It's the amount  
5 between whatever the award was and  
6 what was paid, limited by the maximum  
7 value.

8 **Q. Right. So --**

9 A. Could be less.

10 **Q. That's a very fair**  
11 **point. So let's assume that the jury**  
12 **verdict is in excess of the --**

13 A. Then it would be the  
14 difference between the maximum --

15 **Q. -- maximum value.**

16 A. -- value and what was  
17 already paid.

18 **Q. And when we say "maximum**  
19 **value", to Mr. Finch's point --**

20 A. Yeah.

21 **Q. -- we are including --**  
22 **that is the greater of the maximum**  
23 **value set forth in the matrix or the**  
24 **scheduled value multiplied by the**

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1 non-binding arbitration award --

2 A. Yes.

3 **Q. -- assuming that they --**  
4 **that the jury verdict is not less**  
5 **than those amounts --**

6 A. Yes.

7 **Q. -- will get paid on the**  
8 **same basis as though the claim had**  
9 **been allowed -- excuse me --**  
10 **liquidated upon expedited review?**

11 A. That's what it seems to  
12 say.

13 **Q. The next traunch, if you**  
14 **will, of the jury verdict is the**  
15 **amount between that initial payment**  
16 **and the maximum value for the claim.**  
17 **Is that correct?**

18 MR. FINCH: Object to  
19 form. Maximum value or maximum  
20 extraordinary value as the case  
21 may be.

22 THE WITNESS: Could I  
23 have the question back?

24 (The reporter reads the

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1 extraordinary claims multiplier if  
2 the claim is an extraordinary  
3 claim?

4 A. Well, maximum value is a  
5 defined term. It's a defined term  
6 with respect to extraordinary claims  
7 too.

8 **Q. And then to the extent**  
9 **that there is remaining value to the**  
10 **jury verdict over and above those two**  
11 **traunches that we spoke about, how**  
12 **does that get paid?**

13 A. It doesn't.

14 **Q. I just want to make sure**  
15 **I understand your testimony a few**  
16 **minutes ago. Did I hear you**  
17 **correctly that, to your knowledge, no**  
18 **claimant has ever exercised the right**  
19 **to pursue its claim in the tort**  
20 **system under one of these standard**  
21 **form TDPs?**

22 A. That's my best  
23 recollection.

24 **Q. And you would most**

<p>CPD</p> <p>1 likely have been aware if such an 2 event had taken place? 3 A. I think so, but I can't 4 be sure of that. 5 <b>Q. All right. Let's talk 6 about the extraordinary claims 7 multiplier under Section 5.4(a).</b> 8 A. Yes. 9 MR. J. COHN: I'm sorry, 10 Dan. Where are you? 11 MR. COHN: Section 12 5.4(a) in the TDP. 13 MR. FINCH: Page 32. 14 <b>Q. Now, is it fair to say 15 that to obtain liquidation of a claim 16 as an extraordinary claim a claimant 17 must meet two criteria, one having to 18 do with exposure and one having to do 19 with little likelihood of a 20 substantial recovery elsewhere?</b> 21 A. I don't know whether 22 it's fair to say that. I think 23 that's correct. 24 <b>Q. Now, focusing first on</b></p>	<p>Page 106</p> <p>1 <b>Q. How did this change come 2 about?</b> 3 A. Based upon discussions 4 that I and members of the committee 5 had with you and Mr. Heberling, the 6 idea was that, as distinguished from 7 the usual situation where asbestos 8 claimants were generally exposed to 9 more than one defendant's product, it 10 would be the case in Libby or for 11 people exposed in Libby that there 12 would be only exposure to Grace's 13 product and, thus, that was a little 14 different from what was normally 15 provided. 16 To put in context what the 17 extraordinary claims provision is 18 trying to accomplish, as you know, 19 the scheduled values or even the 20 individual review values are meant to 21 reflect the respective defendants' 22 share of the responsibility for the 23 claim as kind of evidenced 24 historically by what the defendant</p> <p>Page 108</p>
<p>Page 107</p> <p>1 the exposure criteria, how do these 2 vary from standard form TDPs that 3 we've been referring to? 4 A. The variance is the 5 additional provision toward the 6 bottom of the runover paragraph on 7 page 33 that provides for an 8 additional category where the 9 exposure was 95 percent the result of 10 exposure to Grace products. 11 <b>Q. So under the standard 12 form of TDP, there is an 13 extraordinary claim treatment for 14 exposures that are 75 percent the 15 result of the debtor's asbestos?</b> 16 A. Correct. 17 <b>Q. And those provide a five 18 times multiplier for such claims?</b> 19 A. That's correct. 20 <b>Q. And here the change is 21 that there's an eight times 22 multiplier for exposures of 95 23 percent?</b> 24 A. That's correct.</p>	<p>Page 109</p> <p>1 had paid to settle claims. 2 In most jurisdiction, the 3 defendant, which would be Grace here 4 but it could be any of the others, 5 would be jointly and severally liable 6 with others for the tort 7 responsibility and, thus, if the case 8 went to verdict, they would be a 9 single recovery, a single amount, and 10 any one of the jointly and severally 11 responsible tort feasons would have 12 to pay that if called upon to pay 13 that. And that would develop into, 14 under the state law, rules that would 15 involve contribution or things like 16 that among joint tort feasons. 17 The TDP is designed to provide 18 for an award in the normal case where 19 there are multiplicity of available 20 defendants of that defendant's 21 respective share. When we first 22 worked with this concept, which I 23 believe goes back to the original 24 Manville, maybe even the Manville</p>



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1 defendant would have specific  
2 liability to the particular claimant  
3 because of the exposure to the  
4 particular product which was caused  
5 in part by this defendant even if  
6 they didn't manufacture it.

7 MR. SPEIGHTS: Thank  
8 you, sir.

9 THE WITNESS: Next?

10 MR. FINCH: Lunch break?  
11 (Off the record.)

12 EXAMINATION BY

13 MR. BROWN:

14 Q. Good afternoon, Mr.  
15 Inselbuch. Michael Brown. I  
16 represent Geico, Republic Insurance  
17 Company, Seaton Insurance Company  
18 and OneBeacon America Insurance  
19 Company.  
20 Company.

21 A. How fortunate for you.

22 Q. I want to follow up on  
23 some of Mr. Cohn's questioning of you  
24 earlier this morning and I think --

1 was a subcommittee in connection with  
2 the negotiations leading to the term  
3 sheet. Is that correct?

4 A. That's correct.

5 Q. Okay. And those  
6 individuals were Joe Rice, Perry  
7 Weitz, John Cooney and Fred Baron  
8 and/or Russell Budd. Am I correct?

9 A. No, not Fred, no. Steve  
10 Baron --

11 Q. Steve Baron. I'm sorry.

12 A. -- and/or Russell  
13 Budd.

14 Q. All right. Am I correct  
15 that counsel for the ACC was also  
16 involved in those negotiations?

17 A. Correct.

18 Q. And would that be you  
19 and Mr. Lockwood?

20 A. It would certainly be  
21 me. I don't recall whether Lockwood  
22 was there for some or all of that.

23 Q. Okay. Did the other  
24 parties that ultimately became the

Page 191

Page 193

1 I'm not sure I followed all of the  
2 exhibits but I believe Exhibit 2A is  
3 the term sheet, at least your copy of  
4 the term sheet, the one you were  
5 familiar with. Is that correct?

6 A. Yes, sir. It's the one  
7 I signed.

8 Q. Okay. Do you have that  
9 in front of you?

10 A. I do.

11 Q. Okay. I'm correct, am I  
12 not, that it's dated April 6, 2008?

13 A. That's correct.

14 Q. And you executed it on  
15 behalf of the official committee of  
16 asbestos personal injury claimants,  
17 otherwise known as the committee, or  
18 the ACC, correct?

19 A. That's correct.

20 Q. Okay. You indicated  
21 earlier in response to one of Mr.  
22 Cohn's questions that the ACC had a  
23 negotiating subcommittee and I  
24 understood you to be saying that that

1 plan proponents -- did they also have  
2 negotiating teams?

3 A. The debtor certainly  
4 did, the futures claimants certainly  
5 did, the equity security holder  
6 certainly did, yes.

7 Q. Okay. Can you identify  
8 the debtor's negotiating team?

9 A. Their chairman was  
10 there, their general counsel was  
11 there, their chief financial officer  
12 was there, Mr. Bernick was there, the  
13 chief legal officer was there. There  
14 may have been others but those are  
15 the people I remember.

16 Q. Okay. The chairman was  
17 Mr. Festa?

18 A. Yes, sir.

19 Q. And the general counsel  
20 was Mr. Shelnitz?

21 A. Yes, sir.

22 Q. And the CFO was Mr.  
23 LaForce?

24 A. I don't recall his



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1 name.

2 Q. Okay. Who was the chief  
3 legal officer?

4 A. That would have been Mr.  
5 Shelnitz.

6 Q. Okay. And who was the  
7 negotiating team for the FCR?

8 A. Mr. Frankel, at some  
9 points David Austern I believe was  
10 there. There may have been others.

11 Q. You don't recall them?

12 A. I don't recall now.

13 Q. Okay. And how about the  
14 equity committee?

15 A. Mr. Weschler.

16 Q. Is that it?

17 A. As far as I recall.

18 Q. Now, other than the four  
19 parties that ultimately signed the  
20 term sheet, were there any other  
21 parties or entities or individuals  
22 that were involved in the  
23 negotiations leading up to the April  
24 6, 2008 term sheet?

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PP  
Obj:  
R;  
BE;  
F;  
408

1 A. Not that I recall.

2 Q. All right. I think you  
3 testified earlier this morning that  
4 after the term sheet -- Well, let me  
5 back up.

6 You indicated in your earlier  
7 testimony, I believe, that Anne  
8 McMillan from your office prepared  
9 the initial draft of the TDP. Is  
10 that correct?

11 A. I said it may have been  
12 Anne McMillan.

13 Q. Okay. Do you know  
14 whether whoever created it -- well,  
15 let me back up.

16 Was it someone from Caplin &  
17 Drysdale that created the initial  
18 draft?

19 A. Correct.

20 Q. Do you know whether that  
21 draft still exists today?

22 A. No.

23 Q. Do you know what  
24 model -- I think I heard the term

PP  
Obj:  
R

Page 195

Page 197

1 MR. FINCH: Object to  
2 form.

3 A. Not that I recall.

4 Q. Were any of the debtor's  
5 insurers involved in the negotiations  
6 that resulted in the term sheet?

7 A. None that I attended.

8 Q. To your knowledge, were  
9 any of them asked or invited to  
10 participate in the negotiations that  
11 led up to the term sheet?

12 MR. FINCH: Objection,  
13 lack of foundation.

14 A. I don't know.

15 Q. Were you ever advised by  
16 any other party to the negotiations  
17 that they did not want the insurers  
18 to participate in the negotiations?

19 MS. BAER: Objection.

20 A. No.

21 Q. Did any other party to  
22 the negotiations suggest that they  
23 did want the insurers involved in the  
24 negotiations?

PP  
Obj:  
R;  
BE;  
F

PP  
Obj:  
R;  
BE;  
F

PP  
Ctr

PP  
Obj:  
R;  
BE;  
F

1 earlier in your testimony that there  
2 was a model that was used.

3 Do you know what model was used  
4 to create the first draft of the  
5 TDP?

6 A. My ex -- I don't know  
7 the answer. My expectation would be  
8 that she or someone else in the firm  
9 would have started with the  
10 then-most-recent rendition of the TDP  
11 sometime in 2007 that had been  
12 approved either by a committee in  
13 some other bankruptcy or in court and  
14 used that as the beginning place to  
15 start. I don't recall what that  
16 might have been.

17 Q. Okay. Now, you  
18 indicated that that initial draft was  
19 created by your office in the fall of  
20 two thousand --

21 A. Two thousand --

22 Q. Sorry -- in the fall of  
23 2007 for consideration by the  
24 committee.

PP  
Ctr  
Obj:  
H;  
S  
GR  
Obj:  
H;  
S

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1 A. I think that's  
2 correct.

3 **Q. Is that right?**

4 A. I believe that's  
5 correct.

6 **Q. And that was after your**  
7 **office had received input from Mark**  
8 **Peterson on the draft, as I**  
9 **understood your earlier testimony?**

10 A. No, before.

11 **Q. Okay.**

12 A. The draft would have had  
13 blanks for all of the numbers and for  
14 the payment percentage.

15 **Q. Okay. Did it go to Mark**  
16 **Peterson first or did it go to your**  
17 **client first?**

18 A. I don't recall. It  
19 certainly would not have gone to  
20 Peterson first. It might have gone  
21 to him simultaneously.

22 **Q. And Mr. Peterson, I**  
23 **gather, provided you with his**  
24 **comments?**

1 alternate recommendations based upon  
2 different concepts. He sometimes  
3 provides them with ranges of  
4 recommendations for them to  
5 consider.

6 **Q. Okay. You indicated**  
7 **earlier that in or around early 2008**  
8 **that the committee shared its then**  
9 **working draft of the TDP with the**  
10 **FCR. Do I have that correct?**

11 A. I think that timing is  
12 correct but I'm not sure. It could  
13 have been a little earlier than  
14 that.

15 **Q. And had there been a**  
16 **plan filed, a joint plan, proposed**  
17 **plan, by the ACC and FCR at that**  
18 **point?**

19 A. That's my  
20 recollection.

21 **Q. All right. You then**  
22 **indicated that the -- the plan I**  
23 **suppose you were talking about was**  
24 **superseded by events was, I think,**

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1 A. Provided the committee  
2 with his thoughts, yes.

3 **Q. Okay. And what were the**  
4 **nature of his thoughts or comments on**  
5 **the draft that was provided to him?**

6 A. He doesn't comment on  
7 the draft. He provides  
8 information --

9 **Q. What does he comment**  
10 **on?**

11 A. He doesn't comment. He  
12 provides information that will  
13 facilitate the committee's decisions  
14 as to what figures to place in the  
15 matrix and also to deal with the --  
16 just a second. I've got to get the  
17 right word for you -- the claims  
18 payment ratio.

19 **Q. Does he actually provide**  
20 **the committee with figures for the**  
21 **matrix?**

22 A. He does. He provides  
23 his recommendations, he provides them  
24 with considered -- sometimes with

1 **the term that you've used and that's**  
2 **what ultimately led up to the term**  
3 **sheet. What events were you alluding**  
4 **to?**

5 A. Well, soon thereafter we  
6 began the estimation hearings and in  
7 the course of the estimation hearings  
8 what the -- the negotiations that led  
9 to the term sheet began. And once  
10 there was agreement on the term sheet  
11 with the debtor, there was no need to  
12 pursue the separate plan that the  
13 committee and the futures rep had  
14 filed because we would be pursuing a  
15 plan with the debtor and the equity  
16 committee.

17 **Q. When did the estimation**  
18 **hearing begin?**

19 A. I don't recall offhand,  
20 but my best guess would be sometime  
21 in March of 2008.

22 THE WITNESS: Earlier  
23 than that?

24 A. Well, I've got that



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1 wrong. I'm told I got that wrong.  
2 It was earlier in 2008.

3 **Q. You indicated also that**  
4 **at some point -- it wasn't clear to**  
5 **me when in this process -- the draft**  
6 **TDP was shared with Sealed Air. Can**  
7 **you tell me when that was?**

8 A. It would have been later  
9 on, after there was pretty much a  
10 draft of plan documents because they  
11 didn't just see the TDP; they saw a  
12 whole bunch of plan documents to  
13 provide their comments. I can't give  
14 you a date, but it would have been in  
15 2008 at some point.

16 **Q. Would it have been after**  
17 **the term sheet was signed but before**  
18 **the initial plan documents were filed**  
19 **in September of 2008?**

20 A. I don't recall.

21 **Q. Do you have an**  
22 **understanding as to why Sealed Air**  
23 **had an interest in the TDPs?**

24 A. There was a settlement

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1 agreement with Sealed Air and  
2 Fresenius under which they would pay  
3 considerable sums that would be  
4 available to compensate some of the  
5 claimants here. And under the terms  
6 of that settlement agreements, there  
7 were requirements that had to be  
8 accomplished in order to trigger  
9 their obligation to pay the monies.  
10 Some of those obligations involved  
11 protections and language in plans --  
12 in a plan of reorganization for their  
13 benefit.

14 **Q. At the time that the**  
15 **TDPs were shared with Sealed Air for**  
16 **their review, were they also shared**  
17 **with the debtor's insurers for the**  
18 **debtor's insurers' review?**

19 A. I have no idea.

20 **Q. Let me shift gears for a**  
21 **moment because I gather Mr. Cohn is**  
22 **not back with the copies.**

23 MR. J. COHN: I am.

24 MR. BROWN: Oh, you

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1 are.

2 MR. J. COHN: Yes.

3 MR. BROWN: Do you want  
4 to, I guess, give the witness  
5 the one-page bio first?

6 MR. J. COHN: Sure.

7 (Biography page of Elihu  
8 Inselbuch marked for  
9 identification as Inselbuch  
10 Exhibit 5.)

11 **Q. Mr. Inselbuch, you**  
12 **should have before you a one-page**  
13 **document that I'm going to bet that**  
14 **you don't have any trouble**  
15 **identifying but I'll ask the question**  
16 **anyway. Can you identify it?**

17 A. It's a biography of me  
18 that is, I believe, put together by  
19 my firm and is either on the website  
20 or in other material where the firm  
21 collects a rogues gallery of its  
22 lawyers.

23 **Q. I will represent to you**  
24 **that I pulled it off your website.**

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1 **In the second paragraph there**  
2 **are a number of cases that are**  
3 **referenced --**

4 A. Yes.

5 **Q. -- some of which you**  
6 **have mentioned earlier in your**  
7 **testimony today, and what I want to**  
8 **ask you about each of those cases is**  
9 **whether Mark Peterson was involved in**  
10 **those cases. So can you run down the**  
11 **list that is in the bio and tell me,**  
12 **one, whether Mark Peterson was**  
13 **involved and, two, as to each what**  
14 **his role was?**

15 A. Okay.

16 MR. FINCH: Object to  
17 form. You can answer.

18 THE WITNESS: I can  
19 answer this?

20 MR. FINCH: Yes.

21 A. The best I can do, let's  
22 see. Johns-Manville, he was not  
23 involved in the original bankruptcy  
24 proceeding. In the restructuring



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1 throughout the country, how  
2 information might be made available  
3 to the trust, how the process can be  
4 made less cumbersome, things like  
5 that.

6 **Q. Are the members of the**  
7 **plaintiffs' asbestos bar the only**  
8 **ones that have that knowledge?**

9 A. In that detail, yes.

10 **Q. There's no defense**  
11 **attorneys in asbestos litigation that**  
12 **would have that knowledge?**

13 A. No, not all of it. Very  
14 little of it. The defense attorneys  
15 will be familiar with what's in their  
16 files and what they do.

17 **Q. And how does that**  
18 **differ --**

19 MR. FINCH: Object to  
20 form.

21 **Q. -- from what the**  
22 **plaintiffs' asbestos attorneys do?**

23 A. It's like day and  
24 night.

1 consistent with the expectations of  
2 the constituencies that care about  
3 it.

4 **Q. And the only**  
5 **constituencies that care about it, I**  
6 **gather, are the asbestos claimants?**

7 A. And the futures  
8 representative.

9 **Q. Do the insurers have any**  
10 **interest in it?**

11 A. The insurers have an  
12 interest in what they're required to  
13 pay. What they're required to pay is  
14 defined by their contracts.

15 MR. BROWN: All right.

16 I think, Mr. Inselbuch, that  
17 may be all I have. I'll pass  
18 to the next questioner.

19 MR. J. COHN: I'll  
20 follow up. I think it makes  
21 sense.

22  
23 EXAMINATION BY  
24 MR. J. COHN:

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1 **Q. In your experience with**  
2 **other asbestos trusts, does the trust**  
3 **agreements provide that the trustees**  
4 **will be required to consult with the**  
5 **TAC members on various issues?**

6 A. The documents say what  
7 they say. They often call for  
8 consultation on specific issues.

9 **Q. And do they often also**  
10 **call for the trustees to obtain the**  
11 **consent of the TAC and the future**  
12 **claimants' representative before**  
13 **certain actions can be taken?**

14 A. Yes. And failing that  
15 consent, there are provisions for  
16 overriding the refusal of consent.

17 **Q. What is the necessity of**  
18 **having these consent provisions in**  
19 **the trust agreement?**

20 MR. FINCH: Object to  
21 form.

22 A. So that as -- as the  
23 trust is administered, it will be  
24 administered in a way that is

1 **Q. Mr. Inselbuch, Jacob**  
2 **Cohn for Federal Insurance Company.**  
3 **If we could go to the TDPs for**  
4 **a moment, Exhibit --**

5 A. I'd ask you to speak a  
6 little louder --

7 **Q. Sure. You know what?**  
8 **Why don't I come down there?**

9 A. -- because you're  
10 talking in my bad ear.

11 **Q. All right. You have**  
12 **the --**

13 A. I have the TDP.

14 **Q. -- TDPs. If you take a**  
15 **look at page 31, the end of**  
16 **5.3(b)(1)(B) --**

17 A. Yeah.

18 **Q. -- it's the paragraph**  
19 **above the scheduled value**  
20 **paragraph --**

21 A. Yes.

22 **Q. -- beginning provision.**

23 A. Yes.

24 **Q. It has a reference to**

PP  
Obj:  
R: BE;  
F

PP  
Obj:  
R: BE;  
F

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choice of law.

A. Yes.

**Q. And it says -- there's a reference to the Alabama wrongful death statute and there's a reference to "shall only govern the rights between the PI trust and the claimant, and, to the extent the PI trust seeks recovery from any entity that provided insurance coverage to Grace, the Alabama wrongful death statute shall govern."**

A. Uh-huh.

**Q. Are you familiar with that provision?**

A. I see it.

**Q. What is the purpose of that provision?**

A. Which part of it?

**Q. The part that applies -- at least purports to apply a rule to insurer disputes.**

MR. FINCH: Object to form.

Whether or not this provision, as it states, also will govern the relationship with insurers is something that I guess the insurers can debate at some point in court.

**Q. Is this, therefore, intended to be a carve-out from the insurer neutrality provision of the plan?**

MR. FINCH: Object to form, lack of foundation.

(The witness reviews the document.)

A. I don't know the answer to that.

**Q. You are familiar with the insurance neutrality provision of the plan?**

A. Only very generally.

**Q. Would reviewing that give you any help in answering this question?**

A. No. That's something you ought to ask Mr. Lockwood.

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(The witness reviews the document.)

A. The point of this whole provision was to ameliorate a problem that existed under the law of Alabama. As you know, under the terms of the TDP, no punitive damages are included in the recovery. As this was all explained to me at the time, in Alabama the recovery for wrongful death is couched in terms of punitive damages. So that, read literally, there could be no recovery under this document for a wrongful death that would have as its operative jurisdiction the State of Alabama.

This provision was inserted to cure that problem, to make it possible for what we would all -- what we all regarded as run-of-the-mill ordinary death claims that happened to occur in Alabama to recover under the terms of the trust.

**Q. You've represented numerous what have come to be known as asbestos creditors committees, or ACCs, correct?**

A. Yes.

**Q. And as counsel you are representing the members of that committee, correct?**

MR. FINCH: Object to form.

A. Yes.

**Q. And those members have fiduciary duties; is that correct?**

A. Yes.

**Q. To whom do those fiduciary duties run?**

A. The entire constituency.

**Q. Who is the constituency?**

A. All asbestos claimants against the particular debtor.

**Q. Irrespective of the validity of their claims; is that**



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Page 232

**CPD**  
1 correct?

2 MR. FINCH: Object to  
3 form.

**CPD** 4 A. Well, when I say "a  
5 claimant", I presuppose that they  
6 have a claim.

7 **Q. So you operate on the**  
8 **assumption, is it correct, that**  
9 **somebody that is represented by a**  
10 **lawyer that is asserting a claim has**  
11 **a valid claim against that particular**  
12 **debtor?**

13 A. No. You asked me to  
14 whom did the fiduciary duty extend.  
15 It extends to those folks who have  
16 claims.

17 **Q. Is there a fiduciary**  
18 **duty of the committee to attempt to**  
19 **ferret out those people who have come**  
20 **before the Bankruptcy Court but do**  
21 **not have meritorious claims?**

22 A. No. The committee's  
23 duty is to participate in the  
1 preparation of a TDP and a plan that

**CPD**

1 A. Yet-to-come claimants.

2 **Q. -- yet-to-come**  
3 **claimants?**

4 A. But he also is  
5 interested in seeing to it that as  
6 much money as possible goes in the  
7 pot.

8 **Q. They have a common**  
9 **interest in maximizing the size of**  
10 **the pot, correct?**

11 A. I believe so.

12 **Q. And it is therefore in**  
13 **the interest of the asbestos**  
14 **creditors committee and the FCR to**  
15 **see as much insurance money paid into**  
16 **that pot as quickly as possible,**  
17 **correct?**

18 A. Sure.

19 **Q. And when the trust is**  
20 **established, the trust owes a**  
21 **fiduciary duty to its beneficiaries,**  
22 **correct?**

23 A. Correct.

24 **Q. And --**

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Page 233

**CPD** 1 will, as best possible, pay claims  
2 that are valid and in as an efficient  
3 manner as possible.

4 **Q. And as representatives**  
5 **of existing claimants, the ACC wants**  
6 **to get as much money as possible for**  
7 **the existing claimants, correct?**

8 A. First of all, the ACC  
9 are the victims who are appointed to  
10 the committee. You seem to be  
11 fudging over talking about their  
12 lawyers.

13 **Q. I don't think that I am,**  
14 **but please --**

15 A. Okay. I'm talking about  
16 the claimants. Surely, their job is  
17 to see in the debates among the  
18 various creditor constituencies how  
19 much of the pie that's available to  
20 all creditors can be allocated to  
asbestos claimants.

22 **Q. Okay. And the FCR has a**  
23 **different constituency. Those**  
24 **are --**

**CPD**

1 A. The trustees do.

2 **Q. The trustees.**  
3 **And the beneficiaries of the**  
4 **trust --**

5 A. Yes.

6 **Q. -- are existing and**  
7 **future claimants against that debtor**  
8 **who's established a trust, correct?**

9 A. Correct.

10 **Q. And the trust has a**  
11 **fiduciary duty to maximize the**  
12 **compensation to its beneficiaries,**  
13 **correct?**

14 MR. FINCH: Object to  
15 form. Mischaracterizes the  
16 document.

17 A. Sure.

18 **Q. And the main issue**  
19 **between the current claimants and the**  
20 **future claimants is ensuring that**  
21 **enough money is available going out**  
22 **in time to assure as much as possible**  
23 **the non-preferential treatment of**  
24 **each claim. Is that correct?**

PP  
Obj:  
R;  
BE



Page 234	Page 236
<p><b>CPU</b></p> <p>1 A. You could -- that's</p> <p>2 fair. That's a fair way to put it.</p> <p>3 <b>Q. And the trust,</b></p> <p>4 <b>similarly, shares an interest in</b></p> <p>5 <b>getting as much money into the trust</b></p> <p>6 <b>from whatever source as quickly as</b></p> <p>7 <b>possible. Is that correct?</b></p> <p>8 MR. FINCH: Object to</p> <p>9 form.</p> <p><b>CPU</b></p> <p>10 A. Yes. The trustees also</p> <p>11 have a fiduciary responsibility in</p> <p>12 addition to the futures rep to see to</p> <p>13 it that all claimants that come</p> <p>14 before the trust are treated more or</p> <p>15 less equitably.</p> <p>16 <b>Q. Do the trustees have any</b></p> <p>17 <b>duty at all to the insurers?</b></p> <p>18 A. As insurers?</p> <p>19 <b>Q. Yes.</b></p> <p>20 A. Not that I can think</p> <p>21 of.</p> <p>22 <b>Q. In fact, with respect to</b></p> <p>23 <b>the insurance relationship, typically</b></p> <p>24 <b>insurers are in an adversarial</b></p> <p><b>PP Obj: R; BE</b></p>	<p>1 <b>There's no reference in these</b></p> <p>2 <b>TDPs to the doctors who the Manville</b></p> <p>3 <b>trust will no longer consider paying</b></p> <p>4 <b>claims based upon their diagnosis, is</b></p> <p>5 <b>there?</b></p> <p>6 A. That's correct.</p> <p>7 <b>Q. Do you know why those</b></p> <p>8 <b>doctors are not identified here?</b></p> <p>9 A. Because it's for the</p> <p>10 trustees to decide whether or not</p> <p>11 they will list one or another</p> <p>12 facility as being a facility whose</p> <p>13 evidence they will not credit.</p> <p>14 <b>Q. And the trustees are</b></p> <p>15 <b>supposed to consult with TAC members</b></p> <p>16 <b>about that; is that correct?</b></p> <p>17 MR. FINCH: Object to</p> <p>18 form.</p> <p>19 A. Not necessarily.</p> <p>20 <b>Q. In Manville, is there a</b></p> <p>21 <b>cap on the contingent fee that</b></p> <p>22 <b>plaintiffs' attorneys can recover?</b></p> <p>23 A. There is.</p> <p>24 <b>Q. And that is how much?</b></p> <p><b>PP Obj: R; BE</b></p>
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<p><b>CPU</b></p> <p>1 position with the trust, correct?</p> <p>2 A. Yes.</p> <p>3 <b>Q. You've been involved, as</b></p> <p>4 <b>you said, as counsel for what we</b></p> <p>5 <b>could colloquially call the Manville</b></p> <p>6 <b>TAC, correct?</b></p> <p>7 A. Correct, yes. Still</p> <p>8 am.</p> <p>9 <b>Q. Are you familiar with</b></p> <p>10 <b>the Manville trust's having issued</b></p> <p>11 <b>pronouncements that it will no longer</b></p> <p>12 <b>honor claims that are submitted based</b></p> <p>13 <b>upon the diagnosis of certain doctors</b></p> <p>14 <b>whose reliability has been called</b></p> <p>15 <b>into question?</b></p> <p>16 A. I am.</p> <p>17 <b>Q. Would you take a look at</b></p> <p>18 <b>page 40 of the TDPs, please,</b></p> <p>19 <b>5.7(a)(2), regarding the credibility</b></p> <p>20 <b>of medical evidence?</b></p> <p>21 A. Yes.</p> <p>22 <b>Q. There's no reference to</b></p> <p>23 <b>the doctors who have been</b></p> <p>24 <b>discredited -- strike that.</b></p> <p><b>PP Obj: R; BE</b></p> <p><b>CPU</b></p>	<p>1 A. 25 percent.</p> <p>2 <b>Q. Is the rationale for</b></p> <p>3 <b>that because it's a lot easier to</b></p> <p>4 <b>recover from a trust than it is to</b></p> <p>5 <b>recover from a defendant in the tort</b></p> <p>6 <b>system?</b></p> <p>7 A. No.</p> <p>8 MR. FINCH: Objection.</p> <p>9 <b>Q. Is there a rationale for</b></p> <p>10 <b>that?</b></p> <p>11 A. Jack Weinstein insisted</p> <p>12 on it.</p> <p>13 <b>Q. To your knowledge, has</b></p> <p>14 <b>any trust, other than the one that</b></p> <p>15 <b>the judge insisted upon imposing a</b></p> <p>16 <b>fee cap, ever imposed a contingent</b></p> <p>17 <b>fee cap on the recovery of</b></p> <p>18 <b>plaintiffs' attorneys?</b></p> <p>19 A. No. And remember that</p> <p>20 Weinstein was sitting over the</p> <p>21 question of the fairness of a class</p> <p>22 action settlement. He was not</p> <p>23 sitting as a bankruptcy judge.</p> <p>24 <b>Q. Is that fair to say that</b></p>

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**you were the most responsible -- sorry -- the ACC is the most responsible for preparing the TDPs; is that right?**

MR. FINCH: Object to form.

A. As among what group?

**Q. Well --**

A. We were more responsible than the New York City Police Department.

**Q. Well, in the course of negotiating TDPs and plans generally when you are representing --**

A. Yes.

**Q. -- ACCs, is it typical for the ACC's counsel to draft the first draft?**

A. Of the TDP?

**Q. Yes.**

A. Yes.

**Q. And then it's typical that the FCR would do further comment on it?**

**Q. Is that your experience, however?**

MS. BAER: Objection.

MR. FINCH: Object to form, foundation.

A. I don't read their minds.

**Q. Typically, is the involvement of debtors in such situations in the negotiation of TDPs limited to the issues that I've just mentioned?**

MS. BAER: Objection.

MR. FINCH: Object to form.

MS. BAER: Form, foundation.

A. No, no. The debtors have an interest in dealing with objectors that might have objections to the TDP and they'll address those issues with us and with the futures rep, and it would depend on the particular case.

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A. Have to, yes.

**Q. Is it fair to say that the FCR and the ACC are the constituencies that are most concerned with the contents of a TDP?**

MR. FINCH: Object to form.

A. Yes.

**Q. Is it fair to say that once a debtor has cut an economic deal with the asbestos constituencies that its interest in the TDPs are primarily to ensure that they will garner the necessary supermajority vote and comply with 524g so that a plan could be confirmed?**

MR. FINCH: Objection to form.

MS. BAER: Objection. Objection to form, lack of foundation.

A. You'd have to ask them.

MR. J. COHN: I pass the witness. Thank you.

THE WITNESS: Anybody else?

MR. FINCH: Anybody else?

EXAMINATION BY

MS. ABRAVANEL:

**Q. Mr. Inselbuch, my name is Karen Abravanel. I'm from Simpson Thacher and I represent Travelers Casualty & Surety.**

**You said that you haven't reviewed any of the insurance policies at issue in these procedures. Is that right?**

A. That's my best recollection.

**Q. Have you reviewed any of the settlement agreements entered into between Grace and its insurers pre-petition?**

A. I do not believe so.

PP  
Ctr



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<p>1 Q. Okay. Are you aware 2 that the plan places these settlement 3 agreements entered into between Grace 4 and insurers into different 5 categories? 6 MS. BAER: Objection. 7 Foundation, form. 8 MS. ABRAVANEL: I'll 9 rephrase. 10 Q. Are you aware that there 11 are different types of settlement 12 agreements at issue in these 13 proceedings? 14 A. No. 15 Q. Are you aware that 16 certain types of settlement 17 agreements are referred to as 18 asbestos insurance reimbursement 19 agreements? 20 A. There must be, because 21 there are provisions that deal with 22 something that looks like that in the 23 TDP. 24 Q. Okay. What do you</p>	<p>1 know that the TDP has to decide in 2 what traunch they get paid. 3 Q. Okay. Can I refer you 4 to the TDPs at Section 5.6 on page 5 35? 6 A. Okay. Yeah, I've got 7 it. 8 Q. Okay. Do you understand 9 that under the certain asbestos 10 insurance reimbursement agreements 11 Grace has an obligation to indemnify 12 insurers against claims brought by 13 third parties? 14 MR. FINCH: Objection, 15 foundation. 16 MS. BAER: I join in 17 that objection. 18 A. I don't know anything 19 about those documents. 20 Q. Okay. I will represent 21 to you that under certain asbestos 22 reimbursement agreements Grace has an 23 obligation to indemnify the insurers 24 against claims asserted by third</p>
Page 243	Page 245
<p>1 understand an asbestos insurance 2 reimbursement to be? 3 A. I don't know. 4 Q. What provisions in the 5 TDP would you say address asbestos 6 insurance reimbursement agreements? 7 A. I'm looking at Section 8 2.5 and at -- let's see. 9 Q. Section 2.5 is -- 10 A. Just a minute. 11 Q. Sorry. 12 A. In 2.5 which deals with 13 the claims payment ratio, there's 14 something that talks about 15 insurance-related TDP claims and I 16 think there's another place where 17 they talk about this in the 18 definitional provisions of what order 19 things get paid in. 20 Q. Okay. 21 A. But that's the context 22 in which I would know something about 23 this. I'm not entirely clear what 24 they are or how they arise, but I</p>	<p>1 parties. 2 A. Yes. 3 Q. Okay. Turning your 4 attention to Section 5.6, would you 5 say that this section applies to 6 indemnification claims that might be 7 brought by insurers under asbestos 8 insurance reimbursement agreements? 9 MR. FINCH: Objection. 10 Form, lack of foundation, calls 11 for a legal opinion. 12 MS. BAER: The debtor 13 joins in the objection. 14 A. I don't know. I'd have 15 to go back and learn what the 16 so-called claims are and whether they 17 fit within the rubric of indirect PI 18 trust claims. You have a definition 19 here, I guess, at Footnote 8 and if 20 they're in there, they're in there. 21 Q. Okay. Can you tell me, 22 according to the TDPs, how the PI 23 trust were to calculate its 24 obligations for an indirect PI trust</p>



63 (Pages 246 to 249)

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Trav. 1 claim?

2 MR. FINCH: Objection.

3 Form, foundation, calls for  
4 speculation, hypothetical.

5 A. As a general

6 proposition, an indirect claimant  
7 steps into the shoes of the claimant  
8 because the basis for the indirect  
9 claim is that he have absolved the  
10 trust from the direct claimant's  
11 claim. So they could step into the  
12 shoes of the claimant, they could  
13 proceed as an expedited claim, they  
14 could proceed as an individual review  
15 claim. If there were an entitlement  
16 to extraordinary treatment, that  
17 would apply.

18 Q. Okay.

19 A. Whatever -- whatever the  
20 rules that would apply to the direct  
21 claimant would apply to the indirect  
22 claimant.

23 Q. Okay. And let me just  
1 be a little bit more specific. Would

1 MR. DEMMY: I'll do them  
2 from down here. If you can't  
3 hear me, just let me know.

4 THE WITNESS: I can hear  
5 you.

6 MR. FINCH: Who are you  
7 and who do you represent? I  
8 know who you are. Who do you  
9 represent?

10 MR. DEMMY: I will do  
11 that.

12 LPO 13 EXAMINATION BY  
14 MR. DEMMY:

15 Q. My name is John Demmy  
16 and I represent Firemen's Fund  
17 Insurance Company and some other  
18 related insurers.

19 In the Grace case, does the  
20 committee conduct its business  
21 through periodic meetings?

22 A. Yes.

23 Q. Do you participate in  
24 those meetings?

PP  
Obj:  
R

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Trav. 1 the PI -- will the PI trust apply the  
2 payment percentage of a payment --

3 A. Yes.

4 Q. -- on an indirect PI  
5 trust claim?

6 A. Yes.

7 Q. Okay. Can you tell me,  
8 on the flip side, if the plan is  
9 confirmed how will the asbestos PI  
10 trust calculate an insurer's payment  
11 obligation under an asbestos  
12 reinsurance agreement?

13 A. I have no idea.

14 MR. FINCH: Objection.

15 Q. Sorry, sorry. Asbestos  
16 reimbursement agreement.

17 MR. FINCH: Objection to  
18 form and foundation.

19 A. I have no idea.

20 MS. ABRAVANEL: Okay, I  
21 have no further questions.

22 Thank you.

23 THE WITNESS: Anybody  
24 else?

1 A. I do.

2 Q. Who typically  
3 participates in those meetings?

4 A. Counsel for each of the  
5 individual committee members, counsel  
6 for the committee, and whoever else  
7 in a particular situation might be  
8 asked to participate.

9 Q. Do the appointed  
10 committee members, the holders of  
11 claims, ever participate in the  
12 committee meetings?

13 A. Not usually.

14 Q. Do they ever?

15 A. There have been an  
16 occasion where they did but it's --  
17 it would be most unusual.

18 MR. DEMMY: Okay, that's  
19 all the questions I have.  
20 Thank you.

21 THE WITNESS: Anybody  
22 else?

23 MR. FINCH: Next?

24 MR. DOWNEY: Phil

PP  
Obj:  
R

PP  
Obj:  
R; DE;  
F

PP  
Obj:  
R; DE;  
F